S.B.CIVIL WRIT PETITION NO.1026/1998.

22.08.2006.

HON'BLE MR.JUSTICE DALIP SINGH

Mr.Ashok Gaur, for the petitioner.
Mr.B.K.Sharma, Deputy Government Advocate.

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Heard learned counsel for the petitioner as well as the learned Deputy Government Advocate.

In this writ petition, the petitioner has challenged the order (Annexure-14)passed by the respondents on 05.12.1997 whereby the petitioner was directed to refund the amount of subsidy along with interest @ 15% p.a. in terms of clause (8) of the agreement. Clause (8) of the agreement has been filed as Annexure-3 which reads as under:-

> "(8). That in case it is found that the grantee has given some false, incorrect and incomplete information or the grantee has gone out of production within five years from the date of production or has committee any breach of any of the covenants, as mentioned above or any of the provisions in the "State Capital Investment Subsidy Scheme for new Industries, 1990" disbursing authority after according him an opportunity of being heard shall be empowered to recover the whole amount of subsidy paid to the grantee together with 15% interest per annum from date of payment of subsidy. This amount shall be recoverable as an arrear of Land Revenue Act, 1956 dues of the financial institution."

The facts as mentioned in the writ petition by

the petitioner are that the petitioner-Company went into production as per the averments made in the para 9 of the wirt petition in the month of December, 1993 and that the petitioner-Company had to stop its production in June-July, 1994. Thus, after June-July, 1994, the production of the Company stopped. In pursuance of the agreement (Annexure-3) dated 20.05.1994, the petitioner-Company received the subsidy amount on 16.06.1994 amounting to Rs.10,00,000/- and on 05.11.1994 amounting to Rs.5,00,000/-, as has been submitted by the learned counsel for the petitioner. Having received the aforesaid amount of subsidy, the petitioner-Company, as per the averments made in the writ petition, stopped the production. Once, the petitioner-Company stopped the production in June-July, 1994, the petitioner-Company should have sincerely refused to accept the amount of subsidy of Rs.5,00,000/- paid on 05.11.1994 but in spite of the fact that petitioner-Company knew that it had stopped the production, it went ahead and accepted the amount of subsidy in terms of the agreement. Be that as it may, the respondents then sent a letter (Annexure-4) to the petitioner asking for the details in the prescribed proforma which had been sent along with Annexure-4 on 17.04.1996. As per the case of the petitioner-Company, the details were sent to the respondents. However, the respondents then sent another letter (Annexure-5) on 26.04.1997 stating therein that the petitioner had been informed vide letter dated 11.10.1995 to send the details but no such details have been sent and now the petitioner is required to refund the amount within fifteen days together with 15% interest thereon.

Learned counsel for the petitioner had first sought to argue that the condition No.8 in the contract is onerous and against the public policy. So far as the above condition No.8, contained in the agreement (Annexure-3), is concerned, which requires that a person who had sought subsidy amount as per the Scheme framed by the Government has to ensure that the industry remains in production for five years, failing which the benefit of subsidy received is liable to be refunded along with 15% interest per annum from the date of payment of subsidy. It is not understandable as to how such a condition can be onerous and against the public policy. Subsidy is granted on account of the industry being set up and for development of the region and providing employment. But if after receiving the benefit from the Government, the Company does not remain in production and people lose their employment, the agriculturists who produce the raw material also suffer the whole region suffers which the company has added to its assets. The petitioner set up the industry being fully aware and entered into the agreement, it cannot now turn round and say having availed the benefit that the condition is onerous.

The above argument does not cut any ice before this Court and, therefore, deserves to be dismissed.

Admittedly, the facts of the case are that the petitioner-Company received a subsidy amount of Rs.10,00,000/- on 16.06.1994 in pursuance of the Annexure-3 and within a month thereafter, stopped production in June/July, 1994.

In view of the above and more particularly in view of clause (5) of the agreement (Annexure-3) which also provides that unit for which the subsidy is granted shall not stop or discontinue production within a period of five years after the receipt of the subsidy and after the commencement of production except in cases when it remains out of production for short period extending not beyond six months. The reason for stoppage of production as given by the petitioner-Company is that the raw material of soya-beans etc. was not available and therefore, the company could not maintain its production. Suffice it to say that the new crop of soya-bean which was the raw material for the production of petitioner-Company comes in the months of November and December and, therefore, even for a short period of six months if the raw material was not available, there was nothing preventing the petitioner-Company to resume production in the month of January, 1995 when the fresh raw material in the form of soya-bean was available in the market.

In that view of the matter, the contract, as a matter of fact, more particularly the clause (5) of the agreement (Annexure-3) makes sufficient provisions for the difficulties of non-availability of raw material etc.

Another submission was made that no opportunity of hearing or show cause was given and the impugned order was passed in violation of the principles of natural justice. So far this submission is concerned, the record shows that notices were given to the petitioner in the form of Annexures-4 and 5. The petitioner submits that he

sent a reply but has not produced the same along with the writ petition. Moreover, the explanation which has been given is that the production was stopped due to non-availability of raw material in July, 1994. As stated above, this was only seasonal factor and no explanation has been given why production was not resumed once the new crop of soya-bean had come in December, 1994. The agreement provides a six months grace period but in the instant case the petitioner-Company did not start production after June, 1994 till the order Annexure-14 was passed in 1997. There being no satisfactory explanation furnished by the petitioner in the facts and circumstances, the above contention has no merit.

In view of the above, it cannot be said that the conditions in the contract are onerous and against the public policy. In the light of the above fact, I find no good ground to interfere with the order (Annexure-14) passed by the respondents directing the petitioner to refund the amount of subsidy with interest @ 15% per annum as admittedly the petitioner-Company could not maintained the production and discontinued it within five years of having come into production and committed a breach of the agreement (Annexure-3).

Consequently, the writ petition as well as the stay application are dismissed.

(DALIP SINGH),J.

Solanki DS, Jr.P.A.